



September 20, 2000

Ms. Erin Perales
General Counsel
Houston Municipal Employees Pension System
1111 Bagby, Suite 1450
Houston, Texas 77002-2503

OR2000-3641

Dear Ms. Perales:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140250.

The Houston Municipal Employees Pension System (the "system") received a request for information related to pension contributions for certain city employees. You indicate that you have released most of the responsive information. However, you seek to withhold the names and social security numbers of individual contributors. You claim that this information is excepted from disclosure under sections 552.102, 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102 of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section encompasses the common law right to privacy. The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Information may be withheld from the public under the common-law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). Financial information concerning an individual is generally protected by a common law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). However, as information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest, the doctrine of common law privacy does not generally protect this type of information. Open Records Decision Nos. 590 at 3 (1991), 523 at 3-4 (1989).

Resolution of claim that a financial transaction between an individual and a governmental body is protected by the common law right of privacy hinges on the role that the information plays in the relationship between the individual and the governmental body. You indicate that employee participation in the pension plans is subject to election by the employee. You characterize the subject information as “financial information regarding the voluntary plan membership of employees.” Based on your representations, we conclude that the names and social security numbers of plan participants is personal financial information protected by the common law right of privacy. This information must be withheld under section 552.101 of the Government Code.

Since the above discussion disposes of this request, we do not address your argument raised under section 552.117 of the Government Code. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 140250

Encl Submitted documents

cc: Mr. T.R. Talton, Officer
Houston Police Department
Airport Division - IAH
P.O. Box 60864
Houston, Texas 77205
(w/o enclosures)